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10 April 2006

Trade Measures Branch
Australian Customs Service
Customs House
5 Constitution Avenue
CANBERRA ACT 2601

Attention: Antonina Bolsherlarski

Dear Sir/Madam

Re: Joint Study on the Administration of Australia's Anti-Dumping System

I refer to the Joint Study on the Administration of Australia's Anti-Dumping System as announced by the Minister for Justice and Customs, and the Minister for Industry Tourism and Resources, to examine current administrative practices and to consider improvements to the operation of Australia's anti-dumping system.

The Reference Group of the Joint Study will report to the Ministers within six months of the commencement of the Study.

This submission to the Joint Study is made on behalf of the Australian industry manufacturing Hollow Structural Sections ("HSS"). The industry comprises three manufacturers, OneSteel Trading Pty Ltd, Smorgon Steel Tube Mills Pty Ltd and Orrcon Operations Pty Ltd.

The HSS industry has recently been involved with the initiation process for an anti-dumping investigation, as well as with the appeal mechanism provided by the Trade Measures Review Officer ("TMRO"). It is from the interfaces in each area that the HSS offers the following comments on the administration of the Australian anti-dumping system.

1. Access to the anti-dumping system

Pre-screening and Initiation

It has been the HSS industry's experience that the pre-screening phase for a new application is drawn-out and bureaucratic. Despite the legislated 20-day timeframe, the pre-screening phase often extends well beyond this deadline, with the applicant having to work with Customs to resolve issues as required prior to formal initiation. The appeal mechanism through the TMRO is an unpalatable option – due to the inherent time delays and the possible difficulties associated with having the case initiated other than by Customs.

This process imposes a significant drain on the applicant industry's resources, creating a high degree of uncertainty on the outcome. It is the HSS industry's experience that Customs attempts to establish beyond the requirement of "reasonable grounds" for the publication of a dumping duty notice during pre-screening; rather, Customs has already commenced its verification process on the industry's data and has thereby raised the "reasonable grounds" measure to one resembling a level of "beyond reasonable doubt".

The approach adopted by Customs' throughout the pre-screening phase is akin to forensic analysis which is well in excess of the "reasonable grounds" requirement as required by the legislation.

2. Transparency

ABS restrictions on import data

A barrier encountered by applicants in anti-dumping proceedings is the now common occurrence of various types of suppression orders applicable to import data as published by the Australian Bureau of Statistics (ABS). Data is suppressed to varying degrees by the ABS following requests by importers that the publication of the data will lead to the release of confidential business information.

The ready acceptance by the ABS to restrict the publication of the data retards Australian industry's ability to adequately quantify the level of import penetration by dumped goods, as well as evidencing the size of the Australian market for like goods.

The Reference Group is requested to examine options for the release of import data for use by applicant industries in anti-dumping and countervailing applications.

Claims for commercial sensitivity in documents

Throughout the inquiry process documents and reports are sensitized by interested parties to ensure confidential business information is not placed in the public domain. There is a requirement that a non-confidential summary should be provided to replace commercially sensitive information that has been removed from a submission/report.

It is often not the case that an interested party provides a non-confidential summary of the edited version of the document. Rather, the general practice is that large sections of the document are "blacked-out" with little indication of what the substance of the omission relates to.

The HSS industry encourages the Reference Group to support recommendations that ensure non-confidential summaries are provided where information has been omitted from a document placed on the Public File. A significantly tougher stance is required of Customs to ensure all interested parties are aware of the substance of information removed from a submission/report.

Public File

Access to the Public File is necessary for interested parties to actively participate in a formal inquiry. Presently, the Public File is maintained by the Trade Measures Branch at Customs House, Canberra. To obtain a submission, an interested party must either physically attend Customs House in Canberra or request a document be copied and mailed as soon as practicable. This latter approach often can involve a seven day turnaround where normal mail deliveries are involved.

The HSS industry supports the initiative of enabling access to all Public File documents via the Customs website. This would enable the timely flow of relevant information contained in Public File submissions to interested parties and ensure no delays are encountered through the mail system.

3. Conduct of dumping investigations

Exporter Visits

The HSS industry considers that it is important for applicant industries to be able to provide Customs with a briefing of its knowledge of the nominated exporter(s) and their respective home market(s) where an opportunity is available to do this. The applicant may be able to provide Customs with detailed public

information about pricing and/or cost details of the exporter or the exporter's market that is relevant to the nominated investigation period.

Briefings by applicant industries prior to the conduct of an exporter visit by Customs should be encouraged to ensure all relevant information is available to Customs prior to the verification visit.

Applications involving China

The HSS industry is concerned by recent developments in the approach to exporter visits involving China. As a result of recent negotiations between Australia and China, the latter has been afforded "market economy" status in anti-dumping investigations undertaken by Australia. In May 2005, Customs amended the Customs procedural manual for anti-dumping investigations to reflect the change in China's status, as well as to introduce the concept of "artificially low" prices in anti-dumping inquiries.

This latter amendment was introduced to provide applicant companies the opportunity to demonstrate that domestic prices and/or costs in the exporting country may be artificially low due to the influence of State-Owned Enterprises ("SOEs") operating in the sector (whether directly or indirectly through raw material supply, for example).

When an industry asserts the influence of SOEs in the sector in which the exported goods have originated, it is expected that Customs will conduct a thorough examination of the allegations and claims surrounding the pricing for the GUC and/or the raw material costs supplied into that sector in the exporting country. Such an investigation should entail verification beyond establishing via the answering of questions by the exporter that costs and prices are determined according to "market forces".

The HSS industry considers that the "onus of proof" rests solely with the exporter to establish that SOEs do not exercise influence on costs and/or selling prices for the goods under consideration (either in the sector which supplies raw materials to the exporting sector or in the exporting sector itself) and that alternate surrogate information should not be used as a basis for normal value determination. It is expected that simple questions which require answering and are commensurate with a "desk audit" of the exporters' activities would be deemed insufficient to accept data based upon the exporter's records for normal value purposes.

It is the HSS industry's position that Customs should be required to adopt a more rigorous approach to normal value investigations involving Chinese exporters where it is alleged that SOEs influence costs and/or prices for the goods under consideration ("GUC").

Provisional measures

The anti-dumping provisions allow for the imposition of provisional measures following the publication of a preliminary affirmative determination ("PAD"). It is general practice for Customs to presently publish a PAD following the publication of a Statement of Essential Facts ("SoEF") at Day 110 of an investigation.

The HSS industry welcomes the separation of the present apparent linkage between publication of an SoEF and a PAD, and supports the earlier publication of the PAD (and imposition of provisional measures) following Day 60 of an investigation when a preliminary view of dumping and material injury has been established.

It is the HSS industry's view that the present "cautious" approach leading to the imposition of provisional measures provides the importer with additional opportunities to continue to import dumped goods and cause material injury to the Australian industry until Day 110 of an investigation. The current approach to the imposition of provisional measures is all too predictable for exporters/importers concerned. The delayed imposition of measures at around the time of the SoEF does little to discourage injury before Day 110 – earlier relief from the injurious effects of dumping is warranted to ensure the effectiveness of the system.

Retrospective Measures

A further measure which would discourage injurious dumping involves the application of retrospective measures where it can be substantiated that importers knowingly imported dumped goods which have caused material injury to an Australian industry.

The HSS industry encourages the Reference Group to examine options which enable Customs to consider retrospective action where the requirements of the legislation have been satisfied. The adoption of an approach encouraging retrospective measures would further improve the effectiveness of Australia's anti-dumping system.

4. Post imposition of measures

Monitoring and compliance

Following the imposition of interim duties/acceptance of price undertakings there is a general expectation by applicant companies that Customs will monitor the effectiveness of the measures imposed. The extent of the monitoring function by Customs has been contingent upon the resources available within the Trade Measures Branch.

The HSS industry considers the monitoring of dumping measures an important aspect of the overall effectiveness of the anti-dumping system. Monitoring of measures involves more than just ensuring goods have been classified correctly and the appropriate measures levied. Applicant companies consider that the monitoring function also involves an examination of whether selling prices in the market place reflect declared import prices – it is therefore necessary for Customs to regularly conduct sales route exercise assessments to ensure measures are reflected in selling prices on the Australian market.

As a further component of the monitoring and compliance function, the HSS industry considers Customs should be liaising regularly with the Australian industry members to ensure that any instances of apparent circumvention of measures are fully investigated. This activity would also assist Customs in understanding the market impact of the measures on the relevant exporter(s).

It is the HSS industry's view that the monitoring and compliance function undertaken by the Trade measures Branch requires adequate resources to ensure the measures provide the intended relief following imposition.

The foregoing highlights the HSS industry's concerns with the administration of Australia's anti-dumping system. The industry would be pleased to discuss the items identified in this submission as required.

Yours sincerely

John O'Connor

On behalf of the HSS Industry

Cc: Mr T Schreiber, Smorgons Steel Tube Mills
Mr S Loose, Orrcon Operations
Mr S Porter, OneSteel Trading